IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

NOTICE OF MOTION NO.1533 OF 2005
IN
APPEAL LODGING NO.281 OF 2005
IN
LAND ACQUISITION REFERENCE NO.5 OF 1999

The Special Land Acquisition Officer,
MHADA, Mumbai & anr. .. Appellants

v/s.

Bhavsar Construction Co.Pvt.Ltd.
& anr. .. Respondents

Mr.Denzil D'Mello, Assistant Government Pleader for
the appellants.

Mr.C.M.Korde, senior counsel i/by Mr.Nitin Jamdar
for the respondents.

CORAM : R.M. LODHA AND
J.P. DEVADHAR, JJ.

DATED : 9th August, 2005

P.C.

By this notice of motion, the appellants-applicants pray for condonation of delay in filing the appeal against the judgment and award dated 16.10.2003 passed by the learned Single Judge of this court in Land Acquisition Reference No.5 of 1999. The appeal suffers from the delay of 497 days.

2. In support of the notice of motion, initially, the affidavit was filed by one Dattatraya Sambhaji

Doifode (the Special Land Acquisition Officer). However, the said affidavit was found inadequate when the matter came up before us on 4th July, 2005. On the request made by the learned Assistant Government Pleader on that day, we adjourned the matter to enable the appellants-applicants to file additional affidavit. Pursuant thereto, two additional affidavits have been filed. One affidavit is by Dattatraya Sambhaji Doifode (Special Land Acquisition Officer) who had filed the earlier affidavit in support of the notice of motion. The other affidavit is by Shrikant Dondiba Thite (Assistant Controller of Rationing).

3. The two additional affidavits that have now been filed, explain the delay thus-

The application for certified copy of the judgment and award dated 16th October, 2003 was made on 18th October, 2003 by the office of the Government Pleader. By the communication dated 23rd October, 2003 addressed by the office of the Special Land Acquisition Officer, the Controller of Rationing was asked as to whether an appeal was required to be filed. By the letter dated 27th October, 2003, the Controller of Rationing desired the Special Land Acquisition Officer to file appeal

against the judgment and award dated 16th October, 2003 and also sought opinion from the Law and Judiciary Department, Government of Maharashtra. Vide letter dated 31st October, 2003, the office of the Special Land Acquisition Officer sought opinion from the Law and Judiciary Department. By letter dated 3rd November, 2003, the office of the Government Pleader was forwarded with the parawise comments by the office of the Special Land Acquisition Officer. The office of the Government Pleader sought necessary sanction and approval from the Law and Judiciary Department vide their letter dated 12th November, 2003. On 14th November, 2003, the office of the Government Pleader sent their opinion for filing an appeal against the impugned judgment and award. The Law and Judiciary Department issued necessary instructions to file an appeal by their letter dated 29th December, 2003. Thereafter, the office of the Government Pleader was requested to prepare the memorandum of appeal by the office of the Special Land Acquisition Officer vide their letter dated 7th January, 2004. The office of the Special Land Acquisition Officer also vide their letter dated 7th January, 2004 issued instructions to the Controller of Rationing to make payment of the requisite court fee. By the letter dated 3rd February, 2004, the office of the Special Land

Acquisition Officer reminded the Controller of Rationing to deposit the amount of compensation and also requested the Government Pleader to prepare the draft memorandum of appeal. The draft memorandum of appeal was received on 6th March, 2004 by the office of the Special Land Acquisition Officer from the office of the Government Pleader. The draft memorandum of appeal was returned to the office of the Government Pleader vide letter dated 18th March, 2004 after approval and the Controller of Rationing was requested to forward the necessary court fee. The amount of enhanced compensation of Rs.2,06,51,941/- was deposited in the court on 28th April, 2004. It appears that on 20th April, 2004 some correction was made in the judgment and the award dated 16th October, 2003 and for which the opinion was sought from the office of the Government Pleader. Before filing the appeal, as required by the office of the Government Pleader, the office of the Special Land Acquisition Officer requested the Controller of Rationing to submit all necessary documents. For that purpose, the Controller of Rationing prepared 10 sets of documents as required by the Government Pleader's office on 20th December, 2004 and handed over the same to the office of the Government Pleader alongwith the maps and stamp papers. On 3.2.2005, the Controller of Rationing

received letter from the Government Pleader's office for copies of the impugned judgment. By letter dated 11.2.2005, the letter was received by the Controller of Rationing from the Government Pleader's office regarding payment of additional court fee. The Controller of Rationing called for quotations for typing work and it appears that on 12.5.2005, the typing work was complete and then the appeal and the notice of motion were filed.

4. No affidavit has been filed by the respondents controverting the facts stated in the two affidavits of Dattatraya Sambhaji Doiphode and Shrikant Dondiba Thite. We find no justifiable reason for not believing the statements made in these two affidavits. The learned senior counsel for the respondents, however, contended that in the month of April, 2004, the draft memorandum of appeal was ready and the court fee was also received and the enhanced compensation was deposited and therefore, there was no impediment for the appellants in filing the appeal at least in the month of April, 2004 or immediately thereafter. He invited our attention to Rules 877 and 878 of the High Court Rules, Original Side and submitted that alongwith the memorandum of appeal, the certified copy of the judgment was not required to be annexed and so also the other

documents and therefore, the delay thereafter is not properly explained.

5. We are afraid, the submission of the learned senior counsel for the respondents cannot be accepted. The facts that we have stated above clearly indicate that there was no want of diligence in pursuing the matter by the Special Land Acquisition Officer as well as the Controller of Rationing in filing the appeal against the impugned judgment and award. It is true that the appeal suffers from delay of 497 days but that delay is sufficiently explained by these two affidavits. In the case of Collector, Land Acquisition, Anantnag and another v. Mst.Katiji and others, 1987 SC 1353, the Supreme Court laid down the following principles for considering the application for condonation of delay:-

> "1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
>
> 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
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> 3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense

pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption tat delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

6. The Apex Court while laying down the principles also highlighted that on account of an impersonal machinery that the State is and having inherited bureaucratic methodology, the delay in the matters of the State may not be very difficult to understand.

7. As we have already indicated above, the papers moved from various officers and the correspondence ensued between the offices of the Special Land Acquisition Officer, the Controller of Rationing, the office of the Government Pleader and the Law and Judiciary Department and it was for that reason the delay occurred. The enhancement of the compensation in the impugned award is of about 2

crores and the appeal deserves to be heard on merits.

8. As a matter of fact, we are informed by the learned senior counsel for the respondents that the enhanced compensation amounting to Rs.2,06,51,941/- that was deposited by the appellants have been withdrawn by the respondents. Thus, the respondents must not have any serious objection if the appeal is heard on merits.

9. We are, thus, satisfied that the delay in filing the appeal deserves to be condoned. We order accordingly.

10. The notice of motion stands disposed of.

11. Office is directed to process the appeal and post it for admission as soon as numbered.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)